IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

Lucas, Prendergast, Albright, Gibson & Newman,

Plaintiff,

v.

Case No: 94CVH08-5929
(Sheward, J.)

Florence Zschach, as Trustee of the Trust Created by Item 3 of the Last Will and Testament of Clara K. Wirthman, et al.,

(Filed Oct. 26, 1994)

Defendants.

DECISION AND ENTRY GRANTING IN PART DEFENDANTS' MOTION TO JOIN ROBERT E. ALBRIGHT AS PLAINTIFF AND FLORENCE ZSCHACH, MARYLOU ZSCHACH AS INDIVIDUAL DEFENDANTS, FILED SEPTEMBER 14, 1994

Rendered this 26 day of October, 1994. Sheward, J.

This matter is before the Court upon Defendants' Motion to Join Robert E. Albright as Plaintiff and Florence Zachach, Marylou Zschach as Individual Defendants filed on September 14, 1994, and Plaintiff's Reply to Defendants' Motion to Add Parties.

This is an action commenced by Plaintiff law firm to recover legal fees from Defendants. Defendants Florence Zschach and Marylou Zschach, as Trustees of the Trust Created by Item 3 of the Last Will and Testament of Clara K. Wirthman, seek to assert a counterclaim against Robert E. Albright, one [sic] the partners of Plaintiff law firm,

and have filed this motion to join Robert E. Albright in this action as well as to add Defendants Florence Zschach and Marylou Zschach as individual Defendants.

Plaintiff opposes joinder, arguing that any claims Defendants may have against Robert E. Albright individually, rather than as a partner in the law firm, would have no effect on the claims Plaintiff has asserted against Defendants. Further, Plaintiff claims that Defendants have not demonstrated why their claims must be asserted as individuals rather than as trustees.

Upon consideration of the motion, memorandum, and pleadings, the Court concludes that Defendants may join Robert E. Albright as a party to this action pursuant to Civ.R. 20. It appears that the allegations set forth in Defendants' Counterclaim regarding Robert E. Albright arise out of the "same transaction, occurrence, or succession or series of transactions or occurrences" which provide the basis for Plaintiff's claim against Defendants. Civ.R. 20. Further, Defendants Florence Zschach and Marylou Zschach shall not be added as individual Defendants to the action because they were acting in the capacity of trustees as the time they were allegedly injured by Robert E. Albright.

Accordingly, the Court hereby GRANTS Defendants Florence Zschach and Marylou Zschach's Motion to Join Robert E. Albright as a party Plaintiff in this action and DENIES Defendants' Motion to Join Defendants Florence Zschach and Marylou Zschach as individuals.

SO ORDERED.

/s/ Sheward
RICHARD S. SHEWARD, JUDGE

Copies to:

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Margaret Ann Slone, Trustee

Defendant Pro Se Florence Zschach, Trustee
Defendant Pro Se Marylou Zschach, Trustee